

# NATIONAL CANNERS ASSOCIATION INFORMATION LETTER

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## ASSOCIATION SERVICES IN CONNECTION WITH CONSUMER CLAIMS

At a meeting of the Administrative Council in Chicago on January 16th, an amendment was made to the rules governing the services of the Association in connection with consumer claims, with the approval of the Association's General Counsel.

The amendment provides that the Association will not pay stenographic, commissioner's or counsel fees incurred in the taking of depositions of members or of any of the officers or employees of members.

The Association has never paid the expenses of members or their officers or employees in attending the trial of a suit, and it seems reasonable that members should pay the costs of taking any depositions which save them the time and expense of attending the trial.

The amended rules and regulations are as follows:

The National Canners Association has offered to undertake the defense of unfounded consumer complaints involving its members' canned products in accordance with the resolution of its Board of Directors adopted in May, 1923.

This resolution provided that the cost of defense of all alleged food poisoning cases was to be included in membership service, subject to the approval of the counsel of the Association, and the rules and regulations governing the same to be recommended by him. These costs were not to include the payment of damages if the court awarded the same.

Accordingly, this matter has been taken up with the Association's general counsel, Covington, Burling and Rublee, in order to establish a uniform practice in this respect, and our counsel have expressed their opinion that this Association should not be called upon to pay for the services and expenses in connection with such suits where the service and expense are under the direct control of the member and are simply in line with such proper cooperation as the member should afford to the Association's counsel who has been retained to defend the suit. These services and expenses are such as would be rendered or incurred by the member in conducting his own affairs, and while they are, of course, connected with the lawsuit, they are quite distinct from the services and expenses of counsel engaged to defend it. It does not seem unreasonable to expect that members would cooperate to any reasonable extent in providing such assistance as they can reasonably be expected to provide in defending suit.

The Association's general counsel therefore recommends that the Association services in the defense of such suits should be as follows:

1. The Association will continue to investigate all consumer complaints involving canned products of its members, and will pay the cost of such investigations.

2. The Association will find and engage lawyers to defend suits of this kind, whether the member is being sued directly or whether the suit is against the distributor or grocer who has sold the member's canned product involved in the suit; provided, however, that the general counsel of the Association believes the claim to be unjustified and that it should be defended; and provided further, that the member requests the Association to defend the suit and agrees to pay any judgment that may be rendered against the party against whom suit is brought.

3. The Association will pay the fees and necessary expenses of the lawyers engaged by it, bills for such service and expenses to be submitted directly to the Association.

4. The Association will engage the services of and pay the fees and expenses of expert medical and bacteriological witnesses if such are considered necessary by the lawyer selected by the Association to handle the case.

5. The Association does not pay the travelling expenses of the member or distributor involved or of any of their officers or employees, incurred in connection with the suit. Neither does the Association pay any counsel fees, except to counsel employed by the Association and for services authorized by the Association.

6. The Association does not pay stenographic, commissioner's or counsel fees incurred in the taking of depositions of members or of any of the officers or employees of members.

7. In no event is the Association to be in any way responsible for the outcome of the suit. The Association does not pay any judgment obtained or any part thereof, except that the Trustees of the special Protective Fund, authorized in April 1932, may under conditions specified in the Trust Indenture, contribute to the payment of judgments or settlements in excess of \$3,000 but not over \$25,000.

#### CONFERENCES ON CODES

Owing to the fact that the Association published the complete testimony presented at the public hearing on the proposed code for the canning industry, which was held in Washington on February 7th and 8th, no Information Letter was issued the middle of February. Two publications on the hearing were sent to all canners in the country. The first contained a brief resume of the testimony of the sponsors of the code, also the complete statements made at the public hearing by President William Green of the American Federation of Labor, and by Mrs. Elinore Herrick. The second publication contained the entire proceedings of the hearing.

Permission was given at the close of the hearing for those interested to file briefs, these to be in the hands of the NRA within seven days from the date of the hearing. A brief was prepared and filed on behalf of the National Canners Association

on February 15th. A separate statement or brief was filed by the grapefruit canners of Florida to set out the conditions respecting that branch of the industry, which were the subject of some evidence presented at the public hearing.

The committee appointed at the close of the hearing, at the request of Deputy Administrator White, to hold such further conferences as might be necessary with the Deputy Administrator, will meet in Washington on February 28th.

General Hugh S. Johnson, National Recovery Administrator, has called a general conference of Code Authorities and Code Committees in Washington on March 5th to 8th.

This conference will be preceded by public meetings called by the Administration for February 27th to receive suggestions and criticisms from anyone interested in code provisions and their administration. Individual codes or specific provisions thereof will not be taken up at the public meetings. According to the announcement, both the public meetings and the general conference will be resolved into group meetings to consider such major problems as employment, trade practices and code authority organization and administration.

The Association will be represented at the Code Conference, and any action proposed or recommended will be reported to the membership.

#### STATUS OF MARKETING AGREEMENTS

In accordance with arrangements made by industry groups meeting at Chicago in advance of and during the convention, the following committees, representing their respective commodities, met with AAA officials in Washington:

January 24—Corn: J. L. Baxter, Chairman; James Shriver, Howard Orr, Hugh Funderberg, William Clapper, Howard Batchelder, C. J. Coxe, Francis Silver.

January 22—Peas: Walter Glascoff, Chairman; B. C. Olney, E. B. Cosgrove, Hall Wrightson, Alfred Eames.

January 29—Tomatoes: Otto Lowe, Chairman; Ollie Gilliatt, Fred B. Childs, Frank Shook, B. Frank Craddock.

The conferences in each case continued through several days and resulted finally in preparation of proposed marketing agreements and proposed amendments thereto which were distributed to canners by the AAA.

On the proposed Corn Marketing Agreement, with amendments proposed by the sponsors, formal public hearing was held before the AAA in Washington February 15.

On the proposed Marketing Agreement for the Canned Peas

Industry, formal public hearing before the AAA was held in Chicago February 19 and 20.

Both the Corn and Pea Marketing Agreements are still under consideration by the AAA.

The AAA has announced formal public hearing on the proposed Marketing Agreement for the Canned Tomatoes and Tomato Products Industry to be held in Washington March 3. This agreement is accompanied by a proposed amendment applying to tomato canners only providing for allocation.

Formal hearing on a proposed Marketing Agreement for the Red Sour Cherry Canning Industry was held by the AAA in Washington February 5. Since that date the agreement has been under consideration by the Administration.

Following the AAA formal hearing on the proposed Marketing Agreement for California Asparagus on January 20, the Secretary of Agriculture on February 13 tentatively approved the agreement and sent it to contracting canners for their signatures.

#### ALLOCATION ELIMINATED FROM CORN AND PEA AGREEMENTS

Letters have been addressed to corn and pea canners by Mr. J. W. Tapp, Assistant Director, Commodities Division, AAA, relative to the proposed marketing agreements for canned corn and canned peas, in which it is stated that it is not feasible to undertake limitation and allocation of the pack for the 1934 season. The text of the two letters follows:

##### Letter to Corn Canners

On February 15th and 16th a public hearing was held in Washington, D. C., on a proposed marketing agreement for the corn canning industry. The proposed agreement was submitted by a Committee selected by the industry at a meeting especially called for this purpose in Chicago in January.

The two principal provisions of the proposed agreement submitted by the Committee were those relating to (1) the establishment of a higher level of prices to be paid growers and (2) the limitation of the pack and allocation among the various canners. Some canners opposed allocation of the corn pack in 1934, but the evidence presented at the public hearing indicated that a majority of the corn canners were in favor of some method of allocation.

The plan of limitation and allocation of pack presented by the Committee was the result of weeks of diligent work on their part. During their study of this problem, many plans were thoroughly explored and tested in so far as available data permitted. The Committee searched long and earnestly for a method which would accomplish the desired result equitably, but recognized serious weaknesses in all, due in considerable part to the lack of adequate statistics, particularly those relating to individual canners' packs.

It is evident from the record of the public hearing and from the information which the Administration has obtained that the available data upon

which any allocation plan would have to be based are inadequate to insure its fairness to all. Moreover, sufficient data cannot be collected without causing serious delay in contracting for this year's crop. The Agricultural Adjustment Administration has decided, therefore, that limitation and allocation of the 1934 pack will be eliminated from the Agreement which will be sent out for the signature of corn canners.

In view of this action, the attention of every corn canner in the United States is especially called to the responsibility that rests upon him to exercise a strict control over his contracted acreage and pack in 1934. In the event that there should be limitation and allocation of pack in 1935, the Administration will exercise great care that no canner will be able to enlarge his 1935 allotment by unduly expanding his acreage and pack in 1934. During the next few months the Administration will take steps to secure the necessary detailed information upon which to base a sound allocation plan in 1935.

The proposed marketing agreement is being redrafted so that its principal provision relates to the level of prices to be paid growers. You will be advised with reference to this matter at the earliest practicable date.

#### Letter to Pea Canners

On February 19th and 20th a public hearing was held in Chicago on a proposed Marketing Agreement for the Pea Canning Industry. The two principal provisions of this proposed Agreement were those relating (1) to the establishment of a higher level of prices to be paid growers and (2) to the limitation and allocation of the pack among the various canners.

The evidence presented at this hearing indicates that limitation and allocation of the pea pack is not feasible for 1934. It is evident that the available data upon which any allocation plan would have to be based are inadequate, and that the collection of more accurate data would require more time than is now available without causing serious delays in the contracting for this year's crop. In view of this, and of the opposition of a substantial proportion of the canners to allocation in 1934, the Agricultural Adjustment Administration has decided that the plan for limitation and allocation of this year's pack will be eliminated from the Agreement which will be sent out for the signatures of pea canners.

We wish to call the attention of every pea canner in the United States to the responsibility that rests upon him to exercise a strict control over his contracted acreage and pack in 1934. On the basis of average per acre yields, it is estimated that the 1933 acreage of peas grown for canning would have produced a pack of 17 million cases. It is apparent, therefore, that a decrease of acreage rather than an increase is necessary in 1934.

In the past it has been customary for large packs and the accumulation of stocks of canned peas in the hands of canners to be reflected in lower prices to producers in the following year. In view of the fact that practically all peas grown for canning are grown on the basis of contracts between canners and growers, the canners must assume a large measure of responsibility for excess acreage and packs. Failure of canners to agree upon a satisfactory method for the limitation of packs will not relieve canners of their individual responsibility in this matter. Should there be any excess pack in 1934, the Administration will make every effort to prevent it from being reflected in lower prices to the growers of canning peas in 1935.

Finally, it is emphasized that, should there be an acceptable plan for allocation in 1935, such a plan will insure that no canner will be able to improve his position in 1935 by unduly expanding his acreage and pack in 1934.

Consideration is being given this week to the redrafting of the Agreement for the Pea Canning Industry, particularly as to the provisions relating to minimum prices to growers. You will be advised with reference to this matter at the earliest practicable date.

In the event that it is necessary for any canner to contract with growers prior to the effective date of the Marketing Agreement, it is suggested that such contracts be written subject to later adjustment in conformity with the final draft of the Marketing Agreement.

#### HEARING HELD ON REVISED COPELAND BILL

On February 19, Senator Copeland introduced a bill (S. 2800) further revising the bill (S. 2000) revising the Food and Drugs Act. The same day Representative Jenckes introduced in the House a bill (H. R. 7964) differing in many particulars from the Copeland bill.

A hearing on the revised Copeland bill was held on February 27.

#### PERISHABLE AGRICULTURAL COMMODITIES ACT AMENDMENT

The Committee on Agriculture of the House of Representatives has reported out a bill (H. R. 6525) to amend the Perishable Agricultural Commodities Act. The proposed amendments include a provision exempting any person buying any perishable agricultural commodity for canning and/or processing within the state where grown from classification as a "dealer," and from the necessity of securing a license under the Act, whether or not the canned or processed product is to be shipped in interstate or foreign commerce.

Members of the Association may think it worth while to communicate with their Senators and Congressmen with reference to the amendment.

#### STATISTICAL SERVICE PLANS

The National Cannery Association is now making plans for the organization of a statistical service which will continue the work on corn statistics formerly done by the Corn Cannery Institute and which it is hoped may be able to undertake such statistical work as develops in connection with the proposed code for the canning industry and marketing agreements for various commodities.

At the end of 1933, when the Corn Cannery Institute went out of existence, the National Cannery Association was requested to take over this work and was authorized to do so by the Board of Directors.

The urgency of work connected with the canners' code and the proposed marketing agreements has delayed to some degree the formulation of the plans for the statistical work, particularly



as it seemed desirable before adopting definite plans to make a careful survey of the scope of the proposed service in order that it might be adapted to whatever needs developed in connection with the code and marketing agreements.

The Association is at present making every effort to secure a thoroughly competent and well-trained man to head the work and to develop plans for this service that will permit its expansion so as to meet the probable needs of the industry.

#### EXECUTIVE ORDER REGARDING COOPERATIVES

President Roosevelt, by executive order, has ruled that no NRA code of fair competition shall be so construed as to make it a code violation to sell to or through any bona fide and legitimate cooperative organization, including farmers' cooperatives, or to sell through any intervening agency to such cooperative organization.

The order says, further, that no code shall be so construed or interpreted as to prevent any such cooperative organization from being entitled to receive and/or distribute to its members as patronage dividends or otherwise the proceeds or benefits directly or indirectly derived from any discount, commission, rebate, or dividend (a) ordinarily paid or allowed to other purchasers for purchases in wholesale or middlemen quantities or (b) paid or allowed pursuant to the requirement or provisions of any code of fair competition to other purchasers for purchases in wholesale or middleman quantities.

The Administrator for Industry Recovery is authorized by this executive order to determine whether in any doubtful case an organization is a bona fide and legitimate cooperative entitled to the benefits and protections of this order.

#### CANNED MILK PRODUCTION AND STOCKS

	1934	1933	Change
	Pounds	Pounds	Per cent
Total stocks (case goods) February 1:			
Evaporated milk (35 firms).....	167,073,822	167,150,543	+55.92
Condensed milk (7 firms).....	6,394,103	6,524,110	-32.86
Total production (case goods) January:			
Evaporated milk (34 firms).....	94,284,808	111,714,000	-15.60
Condensed milk (6 firms).....	4,859,340	5,008,591	-2.98

#### LEAFLET FURNISHES BEET STATISTICS

The 1933 pack of beets as shown by the final figures collected by the Association amounted to 1,005,773 cases on the basis of 24 No. 2 cans, an increase of 112,821 cases, or approximately 13 per cent, over the 1932 pack, but about 40 per cent under the 5-year average 1928-1932.

A leaflet furnishing these statistics, with comparative fig-

ures for earlier years, is being mailed to all members of the Association.

#### CANNED FOODS EXPORTS IN JANUARY

Articles	January, 1933		January, 1934	
	Pounds	Value	Pounds	Value
Canned meats, total.....	1,120,258	\$201,240	1,199,100	\$339,701
Beef .....	98,841	17,743	103,005	29,345
Pork .....	903,367	163,755	915,186	270,409
Sausage .....	61,879	10,801	114,065	25,580
Other .....	56,171	8,941	66,253	14,307
Canned vegetables, total.....	1,812,553	136,882	2,404,434	200,769
Asparagus .....	505,535	57,231	1,106,219	112,881
Baked beans, and pork and beans.....	247,730	10,482	630,978	26,820
Corn .....	202,946	11,988	115,894	9,335
Peas .....	102,260	6,913	146,731	13,846
Soups .....	79,600	7,892	106,491	13,473
Tomatoes .....	537,376	32,651	102,864	6,925
Other .....	137,097	9,725	195,257	17,489
Condensed milk .....	500,184	62,973	470,498	55,827
Evaporated milk .....	3,128,002	184,857	3,544,976	218,590
Canned fruits, total.....	11,774,500	679,126	29,535,290	1,950,585
Apples and applesauce .....	1,300,246	46,450	690,958	26,090
Apricots .....	840,627	47,093	1,097,021	71,412
Berries, other .....	13,324	1,581	24,670	3,312
Cherries .....	24,344	3,248	94,306	15,188
Fruits for salad .....	667,481	56,224	3,487,506	349,834
Grapefruit .....	2,187,584	121,900	7,516,733	402,082
Loganberries .....	309,596	24,170	111,150	6,609
Peaches .....	3,328,830	173,661	7,988,814	495,882
Pears .....	2,040,843	129,852	6,205,134	380,598
Pineapple .....	924,098	68,653	2,014,000	172,800
Prunes .....	24,689	2,045	85,237	8,352
Other .....	52,907	4,189	219,902	17,766
Salmon .....	1,915,291	205,658	3,237,265	470,302
Sardines .....	1,941,549	96,989	2,755,146	165,822

#### NEW PAMPHLET ISSUED

The Association has just issued a new publication entitled "The Story of the Tin Can." A copy is being sent to each member of the Association and additional copies are available at a nominal charge. This publication is being sent to Home Economics Teachers, Extension Workers, Dietitians, and Libraries.

There has been great need of a publication describing can making. For a long time many requests have been received asking about can manufacture, and it is believed that a wide distribution of this pamphlet will have an educational result that will be of wide benefit to the industry.

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